

APPLICANT:
Robert and Robin Fortney

REQUEST: A variance pursuant to
§ 267-41D(5)(e) and (6) of the Harford
County Code to allow an inground pool
within the 75' NRD Buffer

HEARING DATE: February 28, 2005

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

Case No. 5419

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Robert and Robin Fortney

LOCATION: 909 Autumn View Court / Longmeadow Subdivision
Tax Map: 41 / Grid: 3B / Parcel: 627 / Lot: 28
Election District: Third (3rd)

PRESENT ZONING: R1 / Urban Residential

REQUEST: A variance pursuant to § 267-41D(5)(e) and (6) of the Harford County Code to
allow an inground pool within the 75' Natural Resource District Buffer.

TESTIMONY AND EVIDENCE OF RECORD:

Robert Fortney, Co-Applicant, stated that this case had been postponed from its first scheduled hearing date of June 2, 2004. At that time Harford County People's Counsel was entered into the case, and Mr. Fortney had requested additional time to prepare. Since that time People's Counsel has withdrawn her appearance due to the filing of an Amended Staff Report which contained new findings and recommendations.

Mr. Fortney stated that he and his wife wish to construct a 20' x 40' inground pool surrounded by a concrete deck, which would have combined dimensions of 31' x 56'. The pool and concrete pad would be constructed in their backyard. The subject property is approximately .6 acres in size, and is improved by an existing home, garage, deck and patio. Mr. Fortney stated that the existing deck itself required a variance, as virtually their entire backyard is located within the Natural Resource District and its accompanying buffer (see Attachment 4 to Staff Report). The only property not so encumbered is a small portion of the property located directly behind the garage and to the side of the existing deck. Mr. Fortney stated that he could not locate a pool within that small portion of the property. In fact, little if any use can be made of that area because of the Natural Resource District Buffer area.

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Mr. Fortney's property is also encumbered by a 10' Drainage and Utility Easement around its two sides, which also limit that portion of the property which is available for construction of a pool or, indeed, any other improvement.

Mr. Fortney stated that at least three other parcels in his immediate neighborhood have pools similar to that proposed. He believes that his property is impacted more than most properties by the very extensive Natural Resource District in his backyard. That impact is exacerbated by the drainage and utility easements along both sides of his property.

Mr. Fortney stated that no trees would be removed if the variance were granted, as the pool would be located in an open area. He believes there would be no adverse impact to any of his neighbors. He has spoken to his neighbors, and none has expressed any objection. He is requesting a variance in order to be allowed to construct the pool in his backyard, similar to others in his neighborhood.

The Harford County Department of Planning and Zoning Amended Staff Report of May 25, 2004 corroborates the Applicants testimony. According to the Staff Report, the Department found the property to be unique. "The majority of the property is located within the NRD area." The Staff Report noted that the Soil Conservation District has no objections. The Department further received comments from the Maryland Department of the Environment, which also indicated that it had no objections to the variance. The Department of Planning and Zoning recommended the variance be granted.

No evidence or testimony was presented in opposition.

APPLICABLE LAW:

§ 267-41D(5)(e) and (6) of the Harford County Code allows the granting of a variance to the requirements of the Code:

"(5) Conservation requirements. The following conservation measures are required within this district:

(e) Nontidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.

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- (6) *Variances. The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants desire to disturb a Natural Resources District Buffer in order to construct a swimming pool. The swimming pool is apparently similar in size and shape to others in the County and is, according to the Applicant's testimony, similar to others in his immediate neighborhood. Virtually the entire backyard of the Applicants' property is contained within the Natural Resources District and its associated buffer. Because of this, the Applicants can not build a pool or any other improvement in that area without a variance.

The pool would not be located in a wetlands or protected resource district itself. It is the 75' buffer area which the Applicant asks permission to disturb.

Applicable law § 267-41(D)(6) allows the Board to grant a variance if it is found that “. . . the proposed development will not adversely affect the Natural Resources District.” Comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources are to be examined prior to making such a finding.

It is found based upon evidence of record that the Zoning Administrator, the Soil Conservation Services and the Department of Natural Resources have all given favorable opinions, which the Hearing Examiner interprets as a finding of no adverse impact.

It is further found based upon the uncontradicted evidence of record that the pool, located as proposed on the Applicants' site plan, would have no adverse impact of any nature upon the Natural Resource District itself. The area in which the pool is to be located is open yard. No trees or other vegetation will be removed. There is no indication that any significant grading would take place, or that there would be any physical impact upon the Natural Resources District.

It is further found that the requested variance is the minimum necessary in order to allow the Applicants to construct an amenity to their residence which is similar in size and shape to many others within the County and within their particular neighborhood.

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CONCLUSION:

It is accordingly recommended the Applicants request for a variance be granted, subject to the following:

1. The Applicants shall obtain all necessary permits and inspections for the construction of a pool.
2. The Applicants shall submit a landscaping plan for the remaining area between the pool and the existing forest to the Department of Planning and Zoning for approval prior to the issuance of any permits.
3. As suggested by the Soil Conservation District, any stockpiled soil shall not exceed that which is necessary in order to backfill the pool. Any excess material must be removed off-site to an approved location.

Date: April 1, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner